

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Telefónica Larga Distancia)	
de Puerto Rico, Inc.)	WC Docket No. 06-01
)	
Petition for Expedited Declaratory Ruling)	
Regarding Section 253 of the)	
Communications Act of 1934)	

**REPLY COMMENTS OF
SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”), pursuant to the *Public Notice* released on January 6, 2006 (DA 06-32), hereby respectfully submits its reply comments on the petition for an expedited declaratory ruling filed by Telefónica Larga Distancia de Puerto Rico, Inc. (“TLD”) in the above-captioned proceeding.

In its Petition, TLD seeks a finding from the Commission that Puerto Rico Telephone Company’s (“PRTC’s”) Single Zone Plan violates Section 253(a) of the Communications Act of 1934, as amended (“the Act”), and therefore is subject to preemption under Section 253(d), or, in the alternative if the Single Zone Plan becomes effective, that it is preempted under Section 253.¹ As set forth in its comments, Sprint fully agrees with TLD’s petition. Sprint also concurs with the comments filed by San

¹ On February 3, 2006, PRTC cancelled Section 15 of its Basic Services Tariff Schedule, which contained the Single Zone Plan. Sprint is filing its reply comments to complete the record in this proceeding so that if PRTC refiles the Single Zone Plan or another version of it, the Commission will have a complete record on file concerning the anticompetitive nature of such plans.

Juan Cable, LLC (“SJC”). Below, Sprint responds to the arguments submitted in opposition to TLD’s Petition filed by The Telecommunications Regulatory Board of Puerto Rico (“TRB”) and Puerto Rico Telephone Company, Inc. (“PRTC”).

In its comments, Sprint agreed with TLD’s argument that the elimination of competition in the intrastate market caused by TRB’s sanctioning of the Single Zone Plan would violate Section 253(a) of the Act. That section provides that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate service.” Both opposing parties argue that the TRB has not yet taken any action that could be construed as a “legal requirement” that the Commission could preempt pursuant to Section 253. PRTC claims that “[t]he plain language of Section 253(d) makes clear that in order for the Commission to preempt the enforcement [of] a statute, regulation or legal requirement, there must first *be* a state statute, regulation, or legal requirement to preempt” and that “[h]ere, no legal requirement exists, and any action by the Commission would necessarily be speculative.” PRTC Comments, at 3-4. As Sprint explained in its comments, competitors of PRTC, including Sprint, will be eliminated immediately from the intrastate wireline long distance market if PRTC’s proposed Single Zone Plan is allowed to take effect, because PRTC will switch automatically all of its competitors’ customers to itself for all intrastate calling. Although PRTC deferred the effective date of its proposed Single Zone Plan to April 7, 2006, PRTC could advance the date at any time, and pursuant to the TRB’s regulations, the tariff could become effective immediately. Thus, PRTC’s local exchange customers who are currently presubscribed to a competitor for intrastate long distance service will be transferred to PRTC without their consent on

the date the tariff becomes effective. This is clearly counter to the purpose of Section 253, which is to enable competition. Thus, immediate action by the Commission is required to ensure that the anticompetitive effects of the proposed Single Zone Plan proposed in PRTC's tariff do not materialize.

PRTC argues that its proposed "Single-Zone plan would not 'prohibit' or 'have the effect of prohibiting' any carrier from offering telecommunications services anywhere in Puerto Rico." PRTC Comments at 9, citing 47 U.S.C. §253(a). To the contrary, the Single Zone Plan will prohibit carriers from providing stand-alone intrastate long distance service to PRTC's local exchange customers, which have had access to such service heretofore. PRTC would destroy this competitive market by expanding its local calling area to cover the entire island. Further, PRTC makes the unsupported claim that "it is adopting one calling zone because customers are demanding it." PRTC Comments at 16. This argument cannot otherwise justify the elimination of intraLATA competition in Puerto Rico, thereby overriding the policy of the United States as set forth in the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

PRTC also asserts that "[t]he Single-Zone tariff does not raise antitrust concerns" and that "TLD wrongly assumes that two separate products exist, an essential prerequisite for a tie-in to exist." PRTC Comments at 21. Here again PRTC ignores the product of particular importance to the petitioner and other opponents of PRTC's proposal: the existing intrastate long distance (1+) product to which PRTC's local exchange customers currently may subscribe. All sellers do not sell both intrastate long distance (product A) and local exchange service (product B). Some of PRTC's competitors provide intrastate long distance service (A) only and do not provide the "tying" local exchange product

(B). Further, it is not the case that all customers generally prefer the bundle A-B. Sprint has had a sizeable market share in the intrastate long distance market (A) on a stand-alone basis. Thus, PRTC's argument, which is based on the incorrect assumptions that all carriers offer both the "tied" (A) and the "tying" (B) products and that all customers generally prefer the bundle A-B, is fundamentally flawed.

Finally, Sprint agrees with SJC that "PRTC's actions have now raised the important federal question of whether an incumbent LEC can lawfully mandate the bundling of local and intrastate long distance service and, in so doing, diminish markets that were heretofore competitively neutral" and that "if...mandatory bundling of local and long distance service by incumbent LECs is a clear violation of federal law, it is incumbent upon the Commission to so state." SJC Comments at 15. The Commission must declare expeditiously that it will not allow incumbent local exchange carriers to eliminate the very competition that Congress and the Commission have worked so hard to develop.

For the reasons discussed herein, as well as those set forth in its initial comments, Sprint urges the Commission to recognize the unique issues raised here and issue an

expedited ruling finding that PRTC's proposed Single Zone Plan violates sections 253(a) and 258 of the Communications Act of 1934, as amended.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

A handwritten signature in cursive script, reading "Marybeth M. Banks", positioned above a horizontal line.

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February 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that copies of the **REPLY COMMENTS** of Sprint Nextel Corporation in WC Docket No. 06-1 were sent by e-mail or First Class Mail, postage prepaid, on this the 6th day of February 2006 to the parties listed below.



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February 6, 2006

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